

# TOO COOL FOR SCHOOL

Investigation into the Ministry of  
Training, Colleges and Universities'  
Oversight of Bestech Academy  
Inc. and Enforcement of the Private  
Career Colleges Act

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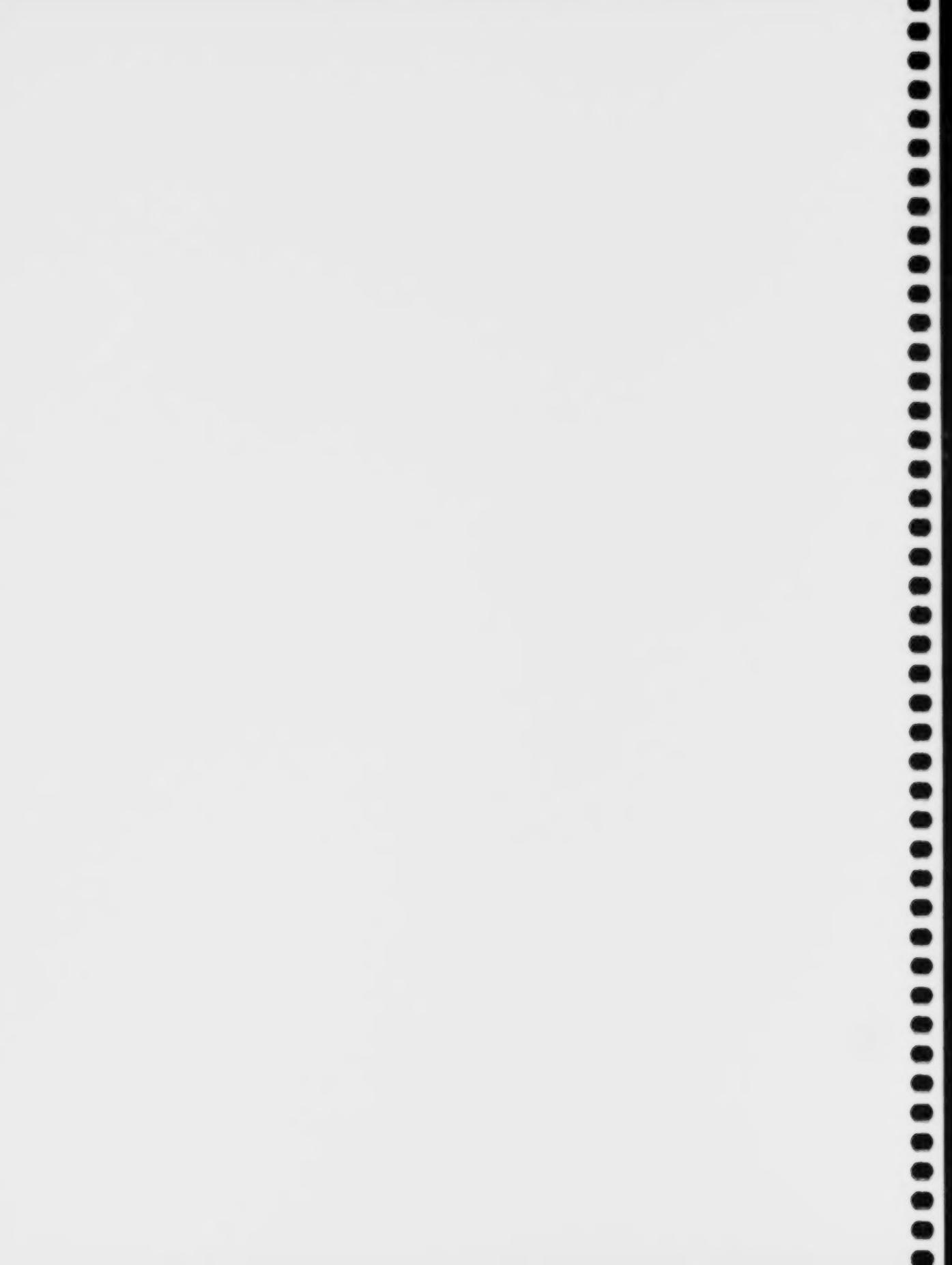


## **Ombudsman Report**

### **Investigation into the Ministry of Training, Colleges and Universities' oversight of Bestech Academy Inc. and enforcement of the *Private Career Colleges Act***

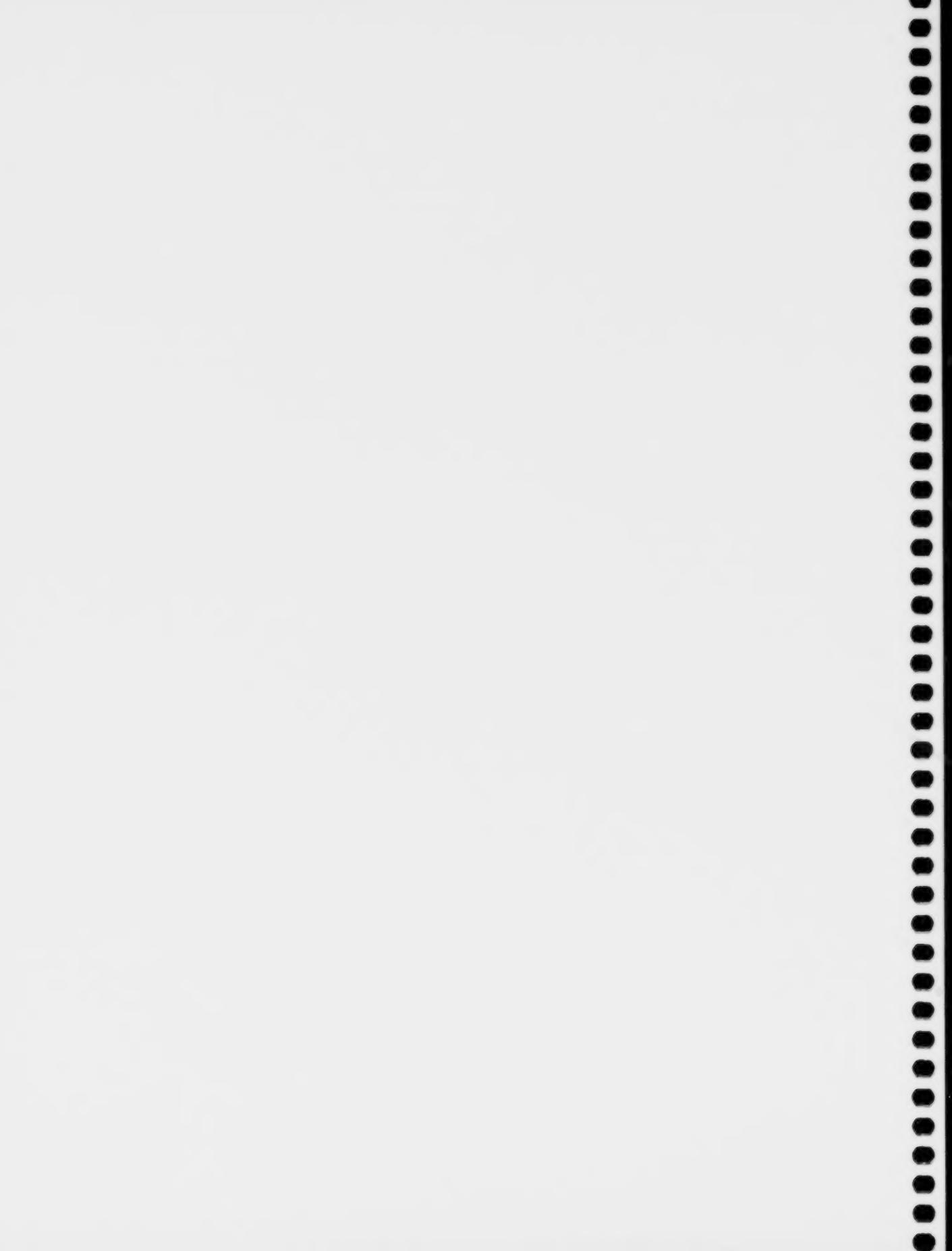
## **“Too Cool for School”**

**André Marin  
Ombudsman of Ontario  
July 2009**



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## Overview

- 1 Private career colleges have been around for over 100 years and provide an important service to individuals seeking practical skills and training to better their employment opportunities. In recognition of the public interest in ensuring the quality of vocational instruction, the province has been regulating private career colleges for about 30 years.
- 2 The Ministry of Training, Colleges and Universities is responsible for overseeing over 400 private career colleges and protecting student consumers against unscrupulous and incompetent training providers. In 2006, the *Private Career Colleges Act, 2005* came into force, providing the Ministry with even broader and more enhanced powers of enforcement, and students with greater protections including access to refunds and alternate training when colleges unexpectedly close their doors. Despite the fact that it is illegal to operate a private career college that is not registered with the Ministry, a considerable number of unregistered training facilities exist in Ontario, presenting a risk to unwary consumers. The Ministry is fully cognizant of this reality. However, it does not vigorously pursue information about or enforcement against rogue operators. When an unregistered trainer does come to its attention, the Ministry typically expends considerable time and effort, not on aggressive enforcement, but on education and persuasion, attempting to bring the violator into compliance with the Act through encouraging voluntary registration. Sometimes this approach works, and sometimes, as in the case of Bestech Academy Inc., this passive course leads to an unmitigated disaster.
- 3 The Ministry had cautioned June Ballegeer, the owner and president of Bestech Academy Inc., in November 2006, that in order to advertise and provide vocational training for gas and oil burner technicians, she had to be registered under the Act. In spite of the Ministry's warning, Ms. Ballegeer began promoting Bestech Academy and enrolling students without the Ministry's knowledge. In April 2007, the Ministry became aware that Bestech Academy was providing illegal fuels industry training at its Stoney Creek campus. By December of that year, the Ministry learned that Bestech Academy was also falsely marketing itself as a registered vocational college. Instead of trying to shut down Bestech Academy to protect student consumers, as a result of confusion and miscommunication, the Ministry instead proceeded to support the school through the Ontario Skills Development Program. In the end, the province spent upwards of \$60,000, a substantial amount of which represented tuition fees, to send seven mature students for retraining at Bestech Academy.

- 4 It wasn't until March 2008 that, as part of a broader initiative targeted at illegal providers of gas technician programs, the Ministry actually issued Bestech a formal warning that its continuing operation could compromise future registration and lead to penalties under the Act. Even then, the Ministry's focus was not on stopping Bestech Academy, but on convincing it to voluntarily come into compliance. The Ministry's efforts proved futile, as Bestech Academy persistently ignored the Ministry's requests to register. In June 2008, the Ministry finally issued a restraining order against the school. However, while the Ministry threatened that there might be dire consequences if Bestech failed to comply with its demands, it still continued to encourage Bestech to send in a registration application.
- 5 Bestech Academy proceeded to boldly disregard the Ministry's entreaties. Registration deadlines were set by the Ministry and ignored by Bestech, which continued to defy the Ministry's restraining order; advertising, enrolling students in and providing illegal programs. In August 2008, Ministry site visits disclosed that 174 students had attended Bestech Academy, and that Ms. Ballegeer had provided false information about the status of a second Bestech location in St. Catharines, which was in arrears of rent and struggling to keep its doors open. Unbelievably, although Bestech Academy had acted in blatant disregard of the law for almost two years, and had also misled the Ministry on a number of occasions, the Ministry continued to hold out to Bestech Academy the possibility that it could transform into a legal operation by finally registering and obtaining the necessary program approvals.
- 6 Bestech Academy eventually sent in an application for registration, but only in a last-ditch effort to stave off further Ministry interference. The application itself was patently deficient, and did not include the required financial security. Instead of pulling the plug then and there, the Ministry gave Bestech another chance, setting a new deadline for compliance. However, as more information trickled in, it became clear that Bestech Academy was financially unviable. It was operating at a loss, creditors were lining up at its doors, investors were panicking, instructors were going unpaid, and rent was in arrears at both its campuses. On top of that, the Ministry learned that Ms. Ballegeer herself was an undischarged bankrupt. On October 31, 2008, the Superintendent of Private Career Colleges issued Bestech Academy a restraining order and refusal to register. But by then it was too little too late. Bestech Academy had already closed its doors of its own accord, leaving students out in the cold.
- 7 Mike Heywood, 31, was one of the unlucky ones. He gave up a part-time job and forked over \$2,500 to attend a night course at Bestech scheduled to run from

October 2008 to April 2009. He had no knowledge that Bestech was operating illegally and already subject to a restraining order. He started his course, only to have classes repeatedly cancelled. One day, the doors were locked for good. He tried unsuccessfully to reach Ms. Ballegeer in an effort to have his hard earned dollars refunded. Eventually, he turned to the *Hamilton Spectator* and our Office to bring attention to the issue and attempt to obtain some relief.

- 8 Because Bestech Academy was not registered under the *Private Career Colleges Act, 2005* students have no recourse to the statutory refund or alternative training scheme. Their only remedy is to sue Bestech in small claims court or complain to the Consumer Protection Branch of the Ministry of Small Business and Consumer Services about unfair business practices. At this stage, given Bestech's and indeed Ms. Ballegeer's precarious financial state, it is doubtful whether any monetary claims will ever be satisfactorily recouped.
- 9 Unfortunately, in addition to many students being out of pocket because of Bestech's sudden collapse, there is also the matter of the quality of the education provided by the school. Students and instructors have described the training provided by Bestech Academy as substandard; it hired instructors without proper qualifications, didn't provide proper textbooks and didn't supply adequate equipment to train on. Contrary to Bestech's advertising, some of its programs were run not only without Ministry approval, but failed to meet additional technical safety accreditation requirements.
- 10 What the score of complainants who approached our Office cannot understand is why the Ministry, which was well aware of Bestech's illegal activities, did not take swift steps to stop it or to at least issue warnings to unsuspecting students.
- 11 Currently, the Ministry has no system in place for actively seeking and tracking information about illegal operators. It has also knowingly tolerated operators that provide training pending registration and those promising that they will become registered. The Ministry doesn't maintain a "buyer beware" list on its website, nor did it promptly post restraining orders or place warning notices at the physical locations of offending training providers. Regrettably, in the Ministry's quest to promote "voluntary compliance" with the Act and regulations, it has failed to ensure effective enforcement or consumer protection, leaving students vulnerable to illegal operators.
- 12 In a bizarre and incredible twist, while one branch of the Ministry was issuing Ms. Ballegeer and her corporation a restraining order in response to their illegal activity,

another was offering Ms. Ballegeer employment. In a bold move, as Bestech Academy crumbled around her, the audacious Ms. Ballegeer applied for work with the Ministry. The Ministry enabled this conduct through its failure to inquire properly into the circumstances of Ms. Ballegeer's relationship with Bestech and to seek out relevant information from private career college regulators. It was not until the Ministry was tipped off by a disgruntled training provider that it investigated and discovered who it had unwittingly welcomed into its midst. It was only then that the Ministry parted ways with the intrepid Ms. Ballegeer, whose long conflict with the Ministry, as the president of an illegal school, rendered her completely unsuitable for the role she had been retained to fill.

**13** Bestech Academy students suffered financial loss at the hands of an individual who considered herself above the law, "too cool for school." They are now left without practical recourse. Bestech Academy is insolvent and effectively defunct, and Ms. Ballegeer is personally bankrupt. But the blame for the Bestech Academy fiasco does not rest solely on Ms. Ballegeer's shoulders. In this case, the Ministry clearly failed to deliver on the promise that students in Ontario should get the education they expect. Through its inattention, indifference, and dereliction, the Ministry created the environment in which June Ballegeer was able to prey on innocent student consumers. I believe that the Ministry's inadequate oversight of Bestech Academy Inc. and Ms. Ballegeer is reflective of a systemic failure to ensure that the requirements of the *Private Career Colleges Act, 2005* are adequately enforced in order to protect the public interest in the quality and accountability of vocational training in this province. In the unique and exceptional circumstances arising in this case, I believe that the Ministry should not only accept responsibility for making necessary changes to ensure that the experience of Bestech Academy is never repeated, but also for redressing the losses of those, who through the Ministry's own lack of due diligence, fell victim to Ms. Ballegeer.

**14** In this report, I have made 11 recommendations to respond to the Ministry's maladministration. I have recommended that, in future, the Ministry should provide consumer warnings, rigorously enforce the *Private Career Colleges Act, 2005* using the full extent of its powers, actively pursue information about illegal vocational trainers, conduct an organizational review of its operations with a view to adopting more effective and efficient division of responsibilities, and consider options for and implement new practices to deal with registration and program approval delays. In addition, to address the embarrassing circumstances that led to the Ministry's hiring of Ms. Ballegeer, I have recommended that the Ministry adopt new human resources practices to allow for broader inquiries concerning the suitability of candidates for Ministry positions. I have also recommended that the Ministry establish a program

to identify former Bestech Academy students, quantify their losses and where appropriate, offer reasonable compensation. Finally, I have asked that the Ministry provide progress reports to my Office on the steps it takes to implement my recommendations.

- 15 The Ministry has agreed to take steps towards implementing 10 of my recommendations. Regrettably, it has refused to accept my recommendation that it establish a program with a view to assisting the student victims of Bestech Academy. Instead, the Ministry has inflexibly clung to the limitations and rigid rules of its system, and rejected out of hand my suggestion that it craft a creative remedy and do the right thing by these individuals.
- 16 At the end of the day, I believe that if private career college students are to be truly afforded the protections of the *Private Career Colleges Act, 2005*, the Ministry must embrace a consumer-centric focus and act decisively and vigilantly to effectively control unregistered vocational colleges.

## **Investigative process**

- 17 On December 30, 2008, the *Hamilton Spectator* published an article about a student at a private vocational school, Bestech Academy, who had lost \$2,578.80, paid towards tuition and books, when the school suddenly closed. The article noted that Bestech had not been registered under the *Private Career Colleges Act, 2005*, and had been operating illegally. On the same day, we received a complaint from Mike Heywood, the student featured in the article. He was concerned about the Ministry of Training, Colleges and Universities' failure to protect the interests of Bestech's students. Within days we had received two more complaints, and the allegations had expanded to include concerns that the Ministry of Training, Colleges and Universities had actually paid for some students to attend the illegal school and even hired Bestech's owner and operator as an employee.
- 18 I advised the Ministry of Training, Colleges and Universities on January 8, 2009 of my intention to investigate the Ministry's oversight of Bestech Academy Inc., including its enforcement of the *Private Career Colleges Act, 2005*, the alleged conflict of interest concerning its hiring of Bestech's owner, and the Ministry's response to student complaints. The investigation was assigned to our Special Ombudsman Response Team (SORT).

- 19 After the investigation was announced publicly, we received another 27 complaints concerning Bestech from students, family members of students, former instructors, and individuals who had invested in the institution.
- 20 A SORT team including seven investigators and an Early Resolution Officer was assigned to conduct the investigation. SORT conducted extensive research into how other Canadian and U.S. jurisdictions oversee private career colleges. Investigators interviewed 16 Ministry staff, including the Superintendent of Private Career Colleges, and three former superintendents. In-depth interviews were conducted with 10 complainants.
- 21 Investigators also interviewed officials from the Consumer Protection Branch, Ministry of Small Business and Consumer Services, as well as representatives of the Technical Standards and Safety Authority. Interviews were conducted with officials from a number of private career colleges and colleges of applied arts and technology, as well as other interested parties such as the Canadian Federation of Students, the National Association of Career Colleges, the Ontario Association of Career Colleges, the Association of Private Colleges, and Colleges Ontario. In addition, investigators interviewed solicitors involved in the field of private career college regulation as well as consultants who regularly deal with registration of private career colleges.
- 22 A site visit of Bestech Academy's main campus was conducted and June Ballegeer, the owner and president of Bestech was also interviewed. Most formal interviews were tape-recorded and transcribed. The SORT team also reviewed 16 binders of material, as well as additional documentation, from the Ministry.
- 23 The team generally received good co-operation from the Ministry, although there were some delays in obtaining information, associated with the fact that during the course of the investigation, the Superintendent of Private Career Colleges moved to another position and two different individuals were called upon to act in that role pending a permanent replacement.

## **Private Career Colleges in Ontario**

- 24 To understand the Ministry's role in the regulation of private career colleges, it is useful to begin with some basic facts about these schools.

25 Private career colleges have been in existence in this province for well over a century. They have been subject to government regulation for about 30 years. As of December 31, 2008, there were more than 27,000 students attending 425 private career colleges of varying sizes at over 500 campuses in Ontario. Together, these schools offer more than 3,000 programs covering a wide range of subjects. Typically, private career college programs are condensed, employment-focused, and enable flexible registration.

26 The vocational training and practical skills offered by private career colleges are particularly attractive to younger students trying to gain a quick competitive edge in the job market as well as to mature students attempting to upgrade their qualifications or to re-enter the workforce. They also appeal to foreign students and new immigrants. While colleges of applied arts and technology offer vocational programs, these generally require attendance over a longer period of time, include more academic studies, have waiting lists, and enrolment and attendance is restricted to fixed periods. Private career colleges offer adult learners the opportunity to fast-track their training, and routinely operate on a continuous-entry basis. In the current climate of recession, with the prospect of looming job losses, it is likely that the training offered by these institutions will become even more desirable and in demand.

27 Ontarians place a considerable amount of trust in their educational institutions. However, unlike publicly supported colleges of applied arts and technology and universities, private career colleges are essentially businesses, primarily dependent on tuition fees for their revenue. While some public funding is available for students to attend qualifying private career college programs, most students pay out of their own pockets. Like other businesses, private career colleges are subject to changing economic vicissitudes. If they fail financially, they may shut their doors without warning, go bankrupt, and leave students in debt and with their studies incomplete. There is an obvious public interest in safeguarding against such eventualities.

28 In recognition that the regulatory framework for private career colleges was outdated and failed to address government priorities of quality and accountability in the training sector, in 2004, the Ministry of Training, Colleges and Universities undertook an intensive examination of the governance of private career colleges. This initiative culminated in a new legislative framework, which provided for increased regulatory powers and greater consumer protection for students.

## The Act gets a Facelift

29 The *Private Career Colleges Act, 2005* was proclaimed in force on September 18, 2006.<sup>1</sup> In referring to the Act in the Legislative Assembly, the responsible Minister remarked:

Private career colleges fill an important niche in our education system. They provide a wide variety of training to students who appreciate learning practical skills on a flexible schedule from an institution close to where they live. The focused training they offer allows rapid entry or re-entry into the workforce.<sup>2</sup>

30 He stated that the new Act would “ensure that all students enrolled in private career colleges get the education and training they were promised and expected.” He identified four key aspects to the Act: mandatory registration, improved student protection, quality improvement, and special measures for international students. With respect to the registration requirement, he emphasized that it would, “support improved quality for all students and protect the overwhelming majority of private career colleges that do an excellent job from the actions of a few.”<sup>3</sup> While private career colleges had been subject to regulation in the past, the new legislation ushered in more enhanced enforcement and consumer protection.

## Operator Registration and Program Approval

31 The *Private Career Colleges Act, 2005* prohibits any person from operating or advertising a private career college, or soliciting students, providing or charging or collecting fees for a vocational program, unless they are registered under the Act.<sup>4</sup>

32 A certificate of registration is required to operate a private career college. Each location at which the college operates must be registered, and operators must renew their registrations annually.<sup>5</sup> The registration requirement is not in itself new. However, in 2006 it was extended to cover a number of schools that had previously functioned without provincial regulation.

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<sup>1</sup> *Private Career Colleges Act, 2005*, S.O. 2005, c. 28, Sch. L [Private Career Colleges Act].

<sup>2</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, (01 November 2006) at 1400 (Hon. Christopher Bentley).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Private Career Colleges Act, supra* note 1 at ss. 7-11.

<sup>5</sup> *Ibid.*, s. 14(3).

33 In considering whether to grant registration or renew a registration, the Superintendent appointed under the Act must be satisfied that:

- It is in the public interest to grant the registration or to renew the registration;<sup>6</sup>
- The applicant will operate the private career college in compliance with the Act and regulations;
- The vocational programs that are provided, or are proposed to be provided, by the private career college meet, or are likely to meet, the requirements of the Act and regulations;
- Having regard to the applicant's financial position, the applicant can be expected to be financially responsible in the operation of the private career college;
- The past conduct of the applicant or, if the applicant is a corporation, of its officers and directors, provides grounds for the belief that the private career college will be operated in accordance with the law and with integrity and honesty; and
- The applicant is not carrying on activities that are, or will be, if the applicant is registered, in contravention of the Act and regulations.<sup>7</sup>

34 The Superintendent may register a private career college subject to conditions.<sup>8</sup> Currently, there are 12 private career colleges operating in Ontario that have had conditions placed on their registrations, one of which provides gas technician training. The Superintendent also has the authority to refuse to register an applicant, and to refuse to renew or to suspend or revoke a registration in certain circumstances subject to the right of the applicant or registrant to require a hearing by the License Appeal Tribunal and ultimately appeal to the Divisional Court.<sup>9</sup> The Superintendent is required to publish particulars of every refusal to renew, suspension or revocation of a registration, once the time period for requiring a hearing by the Tribunal has expired or if a hearing has been held once the Tribunal has made an order.<sup>10</sup>

35 The term "private career college" is broadly defined in the Act, to include "an educational institution or other institution, agency or entity that provides one or

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<sup>6</sup> O. Reg. 415/06, s. 4, sets out the criteria to be considered when determining whether a registration or renewal is in the public interest.

<sup>7</sup> *Private Career Colleges Act*, *supra* note 1 at s. 14.

<sup>8</sup> *Ibid.*, s. 15.

<sup>9</sup> *Ibid.*, ss. 18-20.

<sup>10</sup> *Ibid.*, s. 49(1).

more vocational programs to students for a fee and pursuant to individual contracts with the students...<sup>11</sup> Certain institutions such as colleges of applied arts and technology, universities established under any Act and other schools maintained under any other Act are expressly excluded.

- 36 Each vocational program offered by a private career college must be individually approved by the Superintendent, who must be satisfied that the program will provide skills and knowledge required in order to obtain employment in the prescribed vocation and that the program is likely to meet the applicable standards and performance objectives set out in the Superintendent's policy directives. The Superintendent also has the authority to place conditions on a program approval.<sup>12</sup> At present, there are 71 private career colleges that are subject to conditions on their program approval as part of their registration.
- 37 The Act defines a vocational program as "instruction in the skills and knowledge required in order to obtain employment in a prescribed vocation."<sup>13</sup> For the purposes of this definition, each occupation included in the "National Occupational Classification, 2001 – Occupational Description," published by Human Resources Skills Development Canada is prescribed as a vocation, subject to a list of excluded occupations.<sup>14</sup> The Classification contains over 30,000 job titles organized into 520 occupational groups. There are also some programs that are exempt, for instance those that are less than 40 hours in duration or for which a fee less than \$1,000 is charged.<sup>15</sup>
- 38 The Ministry has established a pre-screening process for private career colleges, which allows persons interested in operating a college to submit a pre-screening application and receive advice as to whether registration is required or not. Since August 2008, pre-screening applications are submitted to the Ministry through the electronic Registration Information for Career Colleges (RICC) system.

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<sup>11</sup> *Ibid.*, s. 1(1).

<sup>12</sup> *Ibid.*, s. 23.

<sup>13</sup> *Ibid.*, s. 1(1).

<sup>14</sup> O. Reg. 415/06, *supra* note 6 at s. 7.

<sup>15</sup> *Ibid.*, s. 9.

## Instructional Staff

- 39** Private career colleges can only employ instructors who meet the qualifications established by the regulations under the *Private Career Colleges Act, 2005*.<sup>16</sup>
- 40** In addition, instructors of certain programs may have to meet additional standards. For instance, instructors providing fuel industry training for individuals seeking certification under Ontario's *Technical Standards and Safety Act, 2000* must be approved by the Technical Standards and Safety Authority (the TSSA).

## Student Protection

- 41** The Act contains a number of features aimed at protecting students. For example, all contracts between a college and student must be in writing and include the statement of students' rights and responsibilities developed by the Superintendent.<sup>17</sup> Colleges must also adopt a policy relating to fee refunds and establish a student complaints procedure.<sup>18</sup> There are restrictions on the fees that can be charged for vocational programs, and there is a "cooling-off period" allowing students to cancel a contract within two days of signing it.<sup>19</sup> One of the most significant safeguards is the establishment of the Training Completion Assurance Fund, which augments the financial security posted by registered private career colleges.<sup>20</sup> All registered private career colleges are required to contribute into the Fund, which provides relief to students when a college closes before they have completed a vocational program. The Fund can be used to enable students to complete their training elsewhere or to obtain a refund of their program fees.
- 42** The Act also strengthens the enforcement tools available to the Ministry both with respect to registered and unregistered colleges.

## Enforcement Provisions

- 43** Under the Act, the Superintendent and his or her designate have the authority to make inquiries and conduct examinations into the affairs of a registered operator of

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<sup>16</sup> *Ibid.*, s. 41.

<sup>17</sup> *Private Career Colleges Act, supra* note 1 at ss. 28, 32.

<sup>18</sup> *Ibid.*, ss. 29, 31.

<sup>19</sup> *Supra* note 6 at s. 44; *Private Career Colleges Act, supra* note 1 at s. 36.

<sup>20</sup> *Supra* note 1 at ss. 3-5. See generally O. Reg. 414/06.

a private career college to ensure compliance with the conditions of registration and the requirements of the Act. In addition, the Superintendent now has the express authority to conduct inquiries and examinations of unregistered operators of private career colleges.<sup>21</sup>

- 44** The Superintendent has broad powers including the authority to enter and inspect any premises without a warrant, photograph premises, inspect documents, and require a person to answer questions or produce information. The Superintendent also has the power to use any data storage, processing or retrieval device used in connection with the business, remove for examination and copy anything relevant to the inquiry or examination and take samples of information used in providing a program.<sup>22</sup>
- 45** The Act also provides for the issuance of notices of contravention and the imposition of administrative monetary penalties for breaches of prescribed provisions of the Act or the regulations.<sup>23</sup> However, this option is not currently available to the Ministry, since the regulations necessary to activate this enforcement mechanism do not yet exist.
- 46** In addition, the Superintendent may issue a restraining order to a person who has contravened the Act or apply to the court for such an order.<sup>24</sup> The Superintendent may also order a registrant to comply with the conditions of registration or with the provisions of the Act or regulations.<sup>25</sup> The Superintendent may publish the particulars of any order made in these circumstances.<sup>26</sup>
- 47** Finally, the Act establishes offence provisions for knowingly furnishing false information in any application or in any statement or return required to be furnished under the Act, for failing to comply with any order, direction or other requirement made under the Act or for contravening any provision of the Act or regulations. Conviction carries a fine of up to \$25,000 for individuals or imprisonment of up to a year or both, including for every director or officer of a corporation who knowingly concurs in the commission of an offence.<sup>27</sup> Corporations are subject to a fine of up to \$100,000.

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<sup>21</sup> *Private Career Colleges Act*, *supra* note 1 at s. 38.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, ss. 39-45.

<sup>24</sup> *Ibid.*, ss. 46-47.

<sup>25</sup> *Ibid.*, s. 46(2).

<sup>26</sup> *Ibid.*, s. 49(2).

<sup>27</sup> *Ibid.*, s. 48.

48 In 2003, it was the Private Institutions Branch, under the Postsecondary Education Division, that had responsibility for oversight of private career colleges. Within this branch, the Policy Unit was responsible for pre-screening of registrants and the Program Accountability Unit dealt with inspections, compliance and registration and program approvals. In the Spring of 2007, the Ministry went through an organizational transformation. Since then, pre-screening has been administered by the Postsecondary Accountability Branch, and compliance has been carried out by the Private Career College Compliance Unit, headed by the Superintendent of Private Career Colleges, under the Student Support Branch of the Postsecondary Education Division. The number of program consultants responsible for registration, approvals and compliance was also increased from five to eight.

49 It is against this legislative and historical backdrop that Bestech Academy Inc. first came to the Ministry's attention, on the eve of the implementation of the new Act.

## Preview of Bestech Academy

50 In the summer of 2006, June Ballegeer began exploring the possibility of establishing her own vocational school.

51 Ms. Ballegeer was quite familiar with the fuel industry. She had worked for the TSSA from 2002 to 2004, and for the better part of 2006 she had been involved with an unregistered private career college, which offered a number of training programs for gas and oil burner technicians.

52 According to Ministry records, on August 31, 2006, the Ministry received a pre-screening form from Ms. Ballegeer on behalf of Bestech Academy Inc. to determine whether registration was required to offer programs in Gas Technician 1, 2, and 3 and Oil Burner Technician 1, 2 and 3.<sup>28</sup> This was a busy time for the Ministry, its staff were out touring the province presenting information on the new Act and regulations, and a two-month moratorium had been placed on new registrations. It took the Ministry almost three months to respond to Ms. Ballegeer's pre-screening application.

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<sup>28</sup> The pre-screening and compliance functions relating to private career colleges are carried out by two separate branches housed under the Postsecondary Education Division of the Ministry. During this investigation, neither branch was able to produce the actual pre-screening application, which we were advised has apparently been lost, and Ms. Ballegeer claimed during this investigation that the pre-screening application was, in fact, in reference to the private career college with which she had been involved previously.

53 On November 16, 2006, the Manager of the Program Accountability Unit (now the Private Career Colleges Compliance Unit) replied to Ms. Ballegeer that the programs she had listed other than the Gas Technician 1 and Oil Burner 1 programs<sup>29</sup> required approval under the *Private Career Colleges Act, 2005*, and that she was required to submit an Application for Registration to Operate a Private Career College along with all Applicant Profile Forms and an Application for Program Approval form to the Superintendent for approval. The Manager also referred Ms. Ballegeer to the Act and regulations and instructed that:

Until such time as your institution has been registered and your programs have been approved, it is a violation under Sections 7, 8 and 11 of the *Private Career Colleges Act, 2005* to deliver or advertise the delivery of your vocational programs. An institution also cannot charge or collect a fee in relation to a vocational program until the registration and program approval process is complete under Section 9 of the Act.

54 The Ministry also assigned Bestech Academy Inc. a private career college identification (PCC ID) number to be referenced when submitting the registration package.

55 Ms. Ballegeer did not submit a registration package, as requested by the Ministry, but it wasn't because she had changed her mind about opening a vocational school. After parting ways with one unregistered private career college in the fall of 2006, Ms. Ballegeer struck out on her own to operate another illegal school at a location in Stoney Creek. By January 2007, according to Ms. Ballegeer, and possibly as early as October 2006 according to school records, Ms. Ballegeer had begun to solicit and enroll students in Bestech Academy in contravention of the *Private Career Colleges Act, 2005*.

56 At some point, Ms. Ballegeer wrote to the Ministry again, requesting a separate letter of exemption for the Gas Technician 1 and Oil Burner Technician 1 programs, which the Ministry had previously told her did not require approval.<sup>30</sup> The Ministry responded by email on April 4, 2007, noting that the Ministry policy had actually changed and that approval was now required for both of these programs. The Ministry also asked Ms. Ballegeer to clarify her relationship with the other unregistered private career college she had been associated with and to provide new

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<sup>29</sup> The Gas Technician 1 and Oil Burner Technician 1 represent the highest levels of certification in these specialties.

<sup>30</sup> The Ministry's records are incomplete and the original communication was not located. Ms. Ballegeer claims that, in fact, she had asked for an exemption for all programs offered by the school.

contact information, since she could no longer be reached at the phone number she had provided on her pre-screening application.

57 Shortly after this exchange, the Ministry learned that Bestech Academy had become operational without obtaining the necessary registration and approvals. However, this did not lead Ministry officials to take any steps to rein Bestech in. To the contrary, as a result of uncertainty, miscommunications and misunderstandings, the Ministry proceeded to provide Bestech with financial incentive to continue to carry on with its business in contempt of the law.

## **Giving Bestech the Green Light**

58 The Ontario Skills Development Program, offers funding for short-term skills training to assist individuals to get back into the workforce. The Ministry's Employment and Training Branch administers the program through a series of service delivery offices, reporting to four regional branches. On April 14, 2007, the Ministry's Hamilton service delivery office received an application to enroll two students at Bestech Academy. Program administrators soon realized that the college was not registered. On April 27, 2007, a program consultant in the Program Accountability Unit confirmed that Bestech Academy was operating in contravention of the Act. However, despite this information, the two trainees were apparently given the go-ahead to register with Bestech.

59 A Ministry email trail indicates that officials recognized that there was a high risk associated with allowing the training to continue, and that it was unlikely that the college would be registered anytime soon, even if it were to actually submit an application. In an email of May 7, 2007, the acting manager of the Program Accountability Unit expressed concern that the students would have no protection under the Act while attending an unapproved program at Bestech, and it would lead to the appearance that the Ministry was funding "an 'illegal' institution." She observed, "it irks our stakeholders who do follow the rules when they discover that funds are going to their competition who are not following the rules." Rather than pull the plug on the training, the Acting Manager suggested the following compromise:

...I'm sure the students will be finished their training by the time Bestech is registered. I think that the most logical approach would be to have the students finish their training...but to let Bestech know in no uncertain terms that they will not be getting any more students

funded by EO until they comply with the Private Career Colleges Act, 2005, and are registered and their program(s) approved.

- 60 While the two students were allowed to continue at Bestech and received tuition and living supports amounting to \$16,376, the Ministry failed to follow up on the suggestion that Bestech should be issued a warning. In fact, the Ministry made no effort to contact Ms. Ballegeer, leaving her with money in her pocket, no incentive to seek registration, and the impression that the Ministry tacitly approved of her activities. In her own words, she saw this as a "stepping stone" towards approval.
- 61 In the end, it was Bestech that initiated the next contact with the Ministry.<sup>31</sup>

## Sending Mixed Messages

- 62 Ms. Ballegeer continued to run illegal vocational programs promoting Bestech Academy on the Internet, through trade magazines, posters, and newspaper and radio advertisements without any interference from the Ministry. On April 30, 2007, Bestech Academy Inc. was formally incorporated, with Ms. Ballegeer as its president.
- 63 At some point, Ms. Ballegeer contacted the Ministry questioning whether her school was entitled to an exemption from the registration requirements since accreditation was already required by the TSSA for heating ventilating and air conditioning industry programs.<sup>32</sup> In responding to her inquiry on July 9, 2007, the Ministry took the opportunity to remind Ms. Ballegeer that her school was in contravention of registration requirements. The Ministry advised Ms. Ballegeer that she was required to submit an application for registration, and explained that TSSA accreditation did not provide protections relating to program quality and student interests. She was also told again that until such time as Bestech Academy Inc. was registered and its programs were approved, it was "a violation under Sections 7, 8 and 11 of the *Private Career Colleges Act, 2005* to deliver or advertise the delivery of vocational program(s)."
- 64 This warning would have been considerably more persuasive had the Ministry not turned around a few months later and funded yet another student to attend Bestech Academy under the Ontario Skills Development Program.

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<sup>31</sup> The Ministry no longer has a copy of the communication from Ms. Ballegeer.

<sup>32</sup> See note 31, above.

65 In late September 2007, two individuals applied through the Ontario Skills Development Program for placement at what turned out to be an unregistered college offering Gas Technician programs. The applications were turned down in October because of the institution's illegal status. However, inexplicably, on November 29, 2007, the Ministry approved funding for one of these individuals to attend Bestech Academy. The student was given \$8,327 in relation to a program running from December 3, 2007 to April 6, 2008.

66 Ironically, the same day funding for the Bestech program was approved, the program manager of the Service Delivery Branch distributed a directive within the Ministry setting out guidelines for approving funding under the Ontario Skills Development Program in relation to the *Private Career Colleges Act, 2005*. The directive provides:

As an interim measure and up to March 31, 2008 as the Ministry works towards full alignment between the application of the OSDP and the PCCA, OSDP applications can be considered for approval if the selected institute delivering vocational training can demonstrate that they have applied to register and have applied for program approval.

If the institution has not taken steps to apply for registration or program approval and is not exempt from the PCCA the OSDP application cannot be approved.

67 Despite the fact that Bestech clearly did not meet the criteria set out in the directive, the Ministry continued to support it through Ontario Skills Development Program funding.

68 Perhaps emboldened by the Ministry's largesse, on December 10, 2007, Bestech Academy sent out a letter to "all unemployment offices" stating:

We are a private academy which teaches gas fitters and oil courses in the HVAC [Heating Ventilating and Air Conditioning] industry and are now registered with the Ministry of Training. Our PCC ID number is 102761.

69 The assertion that Bestech Academy was “registered” was of course manifestly false. While Bestech had been given a PCC ID number after filing a pre-screening application, this was not synonymous with the institution being registered.

70 On December 11, 2007, the manager of the Private Career Colleges Compliance Unit received numerous emails from the Ministry’s regional Service Delivery Branches asking whether Bestech Academy was registered, as it claimed. The response from the manager was that Bestech Academy had only gone through the pre-screening process, but had not registered. While the manager of the Compliance Unit indicated that he would “take this up directly with the institution as a matter of enforcement,” nothing was actually done at the time to address this matter with Bestech.

71 In response to further requests from Ministry field offices for clarification, on December 13, 2007, the manager of the Compliance Unit sent an email to the Employment Training Division noting that Bestech had been told twice that it needed to register, and was continuing to operate illegally. He suggested that “funding them would be quite inappropriate, although obviously that’s not my call.” The program manager of the Ministry’s Service Delivery Branch added in a responding email that, “if this organization is compromising PCCA we should not be supporting them through OSD.”

72 The next day, December 14, 2007, the Ministry received yet another application from a student wishing to be funded through the Ontario Skills Development Program to attend Bestech Academy. Unfortunately, somehow the message that Bestech was operating illegally – and that the Ministry should not be funding students to attend – still had not filtered down to frontline field staff. On December 17, 2007, a Ministry employment training consultant actually spoke with Ms. Ballegeer, who apparently informed him that the school either had or was in the process of submitting an application for registration. She also provided him with a copy of the November 16, 2006 letter from the Ministry in response to the pre-screening application – the letter that had told her that she could not deliver or advertise the delivery of or charge for vocational programs unless the college was registered. Based on this exchange of information, Employment and Training Division staff say that they were somehow misled into assuming that Bestech Academy was complying with the Act. Incredibly, Ministry approval was once again given for a student to attend Bestech Academy’s illegal program.

73 As if this were not bad enough, the situation was further compounded when, on December 17, 2007, the Ministry received three more applications under the Ontario

Skills Development Program in connection with programs at Bestech Academy. Amazingly, Ministry staff also approved all of these funding requests, totaling almost \$40,000. Once again, Bestech Academy was allowed to line its pockets with public funds while flouting the law.

**74** In January 2008, four more prospective students applied to attend Bestech Academy under the Ontario Skills Development Program. In an email of January 31, 2008, an Employment and Training Consultant observed:

We got our wrists slapped for approving clients in January, but Head Office understood that their process is very confusing, and allowed the clients to remain in the course.

**75** While the Ministry had not pulled students from Bestech's programs running through to May 2008, the message that it should probably not dole out any more public dollars in support of Bestech's illegal operation had finally sunk in. While this last funding request was rejected, by this time, as a result of the Ministry's lack of vigilance and internal confusion, it had funded a total of seven students to attend the rogue college at a cost to taxpayers of over \$60,000.<sup>33</sup>

**76** Unfortunately, the cycle of non-compliance was further perpetuated when two of the students funded to attend Bestech under the Ontario Skills Development Program later became instructors at the Academy. These individuals were neither approved instructors under the *Technical Standards and Safety Act, 2000*, nor qualified to teach based on the regulatory standards under the *Private Career Colleges Act, 2005*.

**77** Months passed before the Ministry turned its mind to taking steps to ensure that Bestech Academy actually complied with the legislated requirements. When it did so, it was not as a result of a specific concern with Bestech's operations, but as part of a broader initiative directed at gas technician training providers generally.

## Gas Tech Blitz

**78** While gas technician training schools and programs had legally been subject to registration and approval requirements for many years, this fact was not widely

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<sup>33</sup> The amount funded represents a combination of fees paid directly to Bestech Academy and funds paid directly to students to offset other expenses related to attending the program.

known in the field, and even TSSA officials were unfamiliar with the dual obligations applying to those wishing to train fuels related technicians. This group of schools only came to the Ministry's attention when it encountered regulatory problems with a registered private career college by the name of Industrain. In addition to providing some approved courses, Industrain had been offering a long list of unapproved vocational programs including gas technician training. The Ministry encountered substantial difficulty trying to bring Industrain into compliance, and eventually took the unprecedented step of going to court and obtaining a temporary injunction against it on March 20, 2008.

**79** In the course of its pursuit of Industrain, the Ministry came across the TSSA's website, which listed accredited industry training providers. As a result, the Ministry stumbled upon an entire training sector that had previously escaped its scrutiny. It decided to address the situation through an enforcement "blitz," starting off with a letter-writing campaign.

**80** While the Ministry had been aware for over a year that Bestech Academy had been operating illegally, and knew that it had even falsely promoted itself as a legally registered college, according to the Superintendent of Private Career Colleges, "Biestech wasn't on the radar screen" until the Ministry actually launched its general initiative in March 2008 to bring gas technician schools into compliance.

**81** Bestech Academy was one of a number of unregistered vocational schools to receive a letter from the Ministry, dated March 25, 2008. In its letter, the Ministry warned Bestech that failure to comply with the Act could lead to penalties under the offence provisions. The Ministry requested that Bestech advise it by April 7, 2008, whether or not it would be submitting an application for registration. It also cautioned that if Bestech continued to offer vocational programs, it might preclude subsequent registration on the grounds that Bestech was carrying on activities in contravention of the Act.

**82** On April 3, 2008, Bestech Academy wrote to the Ministry indicating that it intended to submit registration and program approval forms. However, it gave no indication of when this would occur and the Ministry did not follow up with the school. On April 8, 2008, the Ministry also received a fax from Bestech indicating that it intended to submit a full application by the end of the week. However, this date came and went without any further communication from Bestech.

**83** As part of its effort to get a handle on training in this area, the Ministry met with the TSSA on April 23, 2008. As a result of that meeting, the TSSA agreed that the

*Private Career Colleges Act, 2005* applied to industry training providers, which it had accredited. While there is certainly some overlap between the two regulatory schemes, they clearly serve different purposes. The *Technical Standards and Safety Act, 2000* is focused on ensuring that technical training is sound, and conducted in properly equipped facilities by qualified instructors. The *Private Career Colleges Act, 2005* addresses not only the adequacy of training programs, but also consumer protection.

- 84** During the spring of 2008, the Ministry began to conduct research into the unregistered colleges providing gas technician training with a view to issuing restraining orders. On June 4, 2008, the Ministry obtained information from Bestech Academy's website, which confirmed that it was offering six gas technician and oil burner technician programs, had seven instructors and two locations: Stoney Creek and St. Catharines. The next step was for staff to ensure that the provincial government wasn't actually funding the schools through Ontario Skills Development or other programs. In the case of Bestech, the Ministry had funded students for courses up to May 2008. By June, the way was clear for the Ministry to finally take decisive action to bring Bestech under control.
- 85** On June 5, 2008, the Ministry was successful in obtaining a permanent injunction against Industrain with respect to its unapproved vocational programs. The Ministry then turned to trying to bring other illegal operators into line.
- 86** On June 19, 2008, the Ministry issued Bestech, along with a raft of other private career colleges offering gas technician training, a restraining order. Ms. Ballegeer was directed "to immediately cease and desist" operating Bestech Academy and to stop offering non-approved vocational programs at both the Stoney Creek and St. Catharines locations. Bestech was directed to immediately remove all non-approved vocational programs from its advertising and website, to stop enrolling students and to refund tuition to students currently enrolled with the school. The Ministry also advised Bestech that students in non-approved programs had a right to a full refund of training fees regardless of whether they had actually received the training. Bestech Academy was given until July 7, 2008, to provide evidence that it had complied with the order and to confirm in writing that Bestech's application for registration would be delivered to the Ministry by July 31, 2008. The Ministry also took the opportunity to caution Ms. Ballegeer yet again that failure to comply might preclude subsequent registration of the school and lead to penalties for offences under the Act.

87 Once more, the deadline set by the Ministry came and went without any action on Bestech's part. In turn, the Ministry treated Bestech's failure to comply by the July 7, 2008 deadline in the same manner it had treated Bestech's past transgressions. It did nothing.

88 It was Bestech Academy that made the next move. On August 1, 2008, the Ministry received a letter (dated July 7, 2008) from Ms. Ballegeer on behalf of the school. In her letter, Ms. Ballegeer advised that she had been extremely ill and that all the necessary forms and applications would be sent to the Ministry by August 31, 2008. She claimed that the St. Catharines branch of Bestech Academy had closed. Ms. Ballegeer also took the opportunity to elicit sympathy for the school and its students. She commented:

If my operations do not continue, revenue will stop and the business will ultimately fail and close. This will result in failure for our industry, and most importantly failure to our students. Isn't this what we are here to provide to our students – a training institution to develop and train our future in lack of skilled trades in the province?

89 Ms. Ballegeer also referenced the fact that there were other private unregistered training providers operating in the province and suggested that the Ministry's focus on her school was not particularly fair in all the circumstances. She said, "All I am asking for is a "level playing field" for all players." Ms. Ballegeer was very conscious of the fact that there were other schools getting away with breaking the law. As Ms. Ballegeer explained to us during our investigation, she was well aware of the obligation for Bestech Academy to register, but she could not see the logic in doing so when students could simply go down the street and obtain instruction from another unregistered operator. Given that the Ministry does not share enforcement information with the public, Ms. Ballegeer was unaware that all unregistered institutions offering gas technician programs were being pursued for registration.

90 By August 2008, it should have been apparent to the Ministry that Bestech Academy would likely continue to operate illegally, as it had for at least 17 months, and that little reliance could be placed on Bestech's commitment to register by August 31. Despite this, the Ministry was still prepared to give Bestech more time to come into the fold. On August 15, 2008, a program consultant sought direction from the manager of the Private Career Colleges Compliance Unit. She put forward three options:

- Follow up with Bestech Academy by phone and send another letter with a new deadline to respond;
- Inspect the school to determine if it was still operating and collect evidence to support an application for an injunction; or
- Follow up with a phone call and a letter with a new deadline, and failing compliance with the deadline, inspect the school and if it was still in operation, collect evidence in support of an application for injunction.

**91** Ultimately, the Ministry chose the second option. On August 20, 2008, a program consultant attended to inspect Bestech Academy's Stoney Creek location. She confirmed that the school was open and operating. The school's records indicated that 174 students had attended illegal programs between October 2006 and July 2008, and that the majority had paid in full. The school's records also confirmed that it had continued to enroll students even after the restraining order had been issued in June. As for the St. Catharines location, Ms. Ballegeer assured the Program Consultant that it was closed and no longer enrolling students. She also committed to file a completed registration application by August 22, 2008.

**92** Not surprisingly, given Ms. Ballegeer's history of unfulfilled promises, no application for registration of Bestech Academy ever arrived on August 22, 2008.

**93** On August 26, 2008, two Ministry program consultants conducted a second site visit of Bestech Academy, this time attending at both the Stoney Creek and St. Catharines locations. At the time of the visit, the doors at both locations were closed, but signage was still up. According to information provided by neighboring businesses in Stoney Creek, staff had been there in the morning and in St. Catharines, students had been seen entering the facility as recently as the day before. On the face of it, it appeared that Ms. Ballegeer had provided false information about the status of the St. Catharines location.

**94** The day after the Ministry's inspection, Ms. Ballegeer sent an email to the Ministry indicating that she would be sending in her registration application by the end of the day. A program consultant responded, "should we not receive your complete Application to Register a Private Career College by end of day tomorrow, August 28, 2008, we will have no choice but to proceed to the next step in our enforcement continuum."

**95** Consistent with its well-established pattern of non-compliance, Bestech did not send in a registration application by the end of the day on August 27, 2008 as Ms. Ballegeer had promised, nor by the deadline of August 28, 2008 set by Ministry

staff. It wasn't until August 29, 2008, that the long awaited application, dated July 30, 2008, finally made its appearance. The application itself was of extremely poor quality and didn't include the necessary financial security. It was "a mess," handwritten and incomplete. It had clearly been cobbled together simply to appease the Ministry and try to ward off any further enforcement efforts on its part. And in the end, Bestech's strategy did pay off. By filing the application, Bestech was able to stall enforcement action a little longer.

- 96** Given Bestech Academy's history of operating illegally despite repeated warnings, its failure to follow through on undertakings, the incompetence apparent in its registration application as well as the fact that it had misled the Ministry on multiple occasions, it seems virtually inconceivable that the company could have satisfied the compliance and integrity standards for registration. However, rather than follow through on its threats to take firm action in light of the school's brazen violation of the law, the Ministry decided to give Bestech Academy yet another chance to see the error of its ways.
- 97** On September 19, 2008, the Ministry wrote to Ms. Ballegeer, setting out 17 deficiencies with the application for registration and 12 deficiencies with the application for program approval. Among the deficiencies were the absence of a pro-forma financial statement and a letter of credit. Bestech Academy was given another deadline. This time it had until October 3, 2008, to satisfy the Ministry's requirements. For good measure, the Ministry once more referenced the fact that if the school failed to submit the completed application by the requested date and continued to operate despite the restraining order, it might be subject to penalties under the offence provisions. At this point, it is doubtful that the prospect of prosecution would have held much of a threat. After all, the Ministry had repeatedly signaled that it would take stronger enforcement steps, and yet the college had continued to act in defiance of the Act with impunity.
- 98** Bestech Academy never did submit the required financial security along with its application. The reason for this became clear when on September 24, 2008, the school forwarded unaudited financial statements, showing that Bestech Academy was actually operating at a loss and had insufficient current assets to meet its current liabilities. On September 28, 2008, Ms. Ballegeer wrote to the Ministry and changed her response to one of the questions on the applicant profile form, she now confirmed that she had in fact filed for personal bankruptcy in September 2006. The Ministry had also learned from another source that Ms. Ballegeer was an undischarged bankrupt, and was embroiled in a financial dispute with the operator of the unregistered private career college she was formerly involved with.

**99** While the Ministry pondered the grim financial picture of Bestech Academy that was emerging, the school continued to advertise its illegal programs, and enroll students, who were oblivious to Bestech's precarious state.

**100** On October 9, 2008, Bestech sent in a revised application form, which underscored the fact that it was in financial difficulty. This was followed on October 14, 2008, by a call to the Ministry from the landlord of Bestech's Stoney Creek campus, who Ms. Ballegeer had initially misled Ministry officials into believing was her lawyer. The landlord advised that Bestech Academy was in arrears of rent and asked when a decision on Bestech's registration application would be made. On October 27, 2008, an instructor and former student of Bestech Academy contacted the Ministry, alleging that he had invested \$85,000 of his retirement income in the school, and that the landlord would be changing the locks by the end of the week.

**101** Ultimately, on October 31, 2008, the Superintendent of Private Career Colleges issued Bestech Academy and Ms. Ballegeer another restraining order along with a notice of refusal to register. Bestech Academy was given until November 20, 2008, to supply confirmation that it had ceased operations and to satisfy a number of demands for information. Registration was refused primarily based on Bestech's failure to substantiate that it was financially viable.

**102** In the end, Bestech did close its doors in late October 2008, leaving instructors, investors and many students in the lurch. However, it was not the Ministry's enforcement efforts that had finally brought the college to heel, but Bestech's own financial mismanagement.

**103** Registration and program approval are the linchpins of student protection under the *Private Career Colleges Act, 2005*. If a school or program is not approved, then students are out of luck. In the wake of Bestech's closure, frustrated students and parents contacted the Ministry, only to be told that they would have to pursue a small claims court action against Bestech to try to recover tuition paid for incomplete courses.

**104** According to a Ministry official, another option for students seeking to obtain a refund from an unregistered private career college or an unapproved program is by filing an individual complaint with the Consumer Protection Branch of the Ministry of Small Business and Consumer Services about the school's unfair business practices. This Ministry has the authority to investigate and prosecute in certain

circumstances, and is currently considering whether to launch an investigation into complaints received about Bestech Academy.

105 Unfortunately, it is far from certain whether Bestech Academy's victims will ever manage to recover their lost tuition, through any means, given the sorry financial state of Bestech Academy and Ms. Ballegeer.

## Failed Dreams in the Gas Tech Field

106 Bestech's students were typical of those attending vocational programs. They ranged from those fresh out of high school looking for a start in the world to mature students trying to improve their economic outlook. Bestech was very good at promoting its programs, and selling the dream of occupational enhancement to unsuspecting consumers. The reality, however, was that Bestech's programming was substandard; not only were some of its instructors not properly qualified to teach, some of its programs didn't have TSSA accreditation, let alone approval from the Ministry. As a result of Bestech's precarious financial situation, students went without proper textbooks or equipment to train on. Instructors we interviewed described Bestech Academy variously as "a fiasco" and a "ticket mill," geared at pushing students through as quickly as possible. And in the background, instructors were not being paid and Bestech's creditors were threatening to shut down the hydro, cut off the phone lines, and stop supplying the fuels needed for practical instruction. When the house of cards finally collapsed, investors lost their savings, and many students were out their tuition for incomplete courses.

107 William Roberts, 57, first heard about Bestech from flyers sent to the company where he worked. Mr. Roberts already had his Gas Technician 2 certification, which he had earned through a college of applied arts and technology a few years previously. He was looking to increase his income by qualifying as a Gas Technician 1. The flyer he reviewed in November 2007 touted the Gas Technician 1 program as being "TSSA Accredited", and offered a bonus discount for early enrolment. He paid \$1,750 in tuition and started the course, which was to run from November 13, 2007 to March 13, 2008. What Mr. Roberts did not know at the time was not only was Bestech operating as an illegal private career college, it did not, as it falsely advertised, have TSSA accreditation to train for Gas Technician 1 certification. The deficiencies of the program were soon apparent to him when it came time for practical training. Bestech had no equipment for this purpose, and after students and an instructor salvaged some from an old church basement, it could not be used, since there wasn't a sufficient gas supply to the school to operate it.

When Mr. Roberts finally called the TSSA to complain, he learned that the course was not accredited. Fortunately for him, he blew the whistle on the school to his classmates, who confronted Ms. Ballegeer. He and another student demanded that their tuition be refunded. He was able to recover most of the money he had paid for tuition, however, the cheque Ms. Ballegeer provided for the remainder was returned "NSF".

**108** Todd Abernethy was a 42-year-old unemployed steelworker when he was referred by the unemployment office to Bestech Academy for retraining. He was lucky, his tuition was paid by the Ontario Skills Development Program. His main complaint was the quality of the programming that Bestech offered. He explained that the whole focus of the course was to train students in how to write the TSSA certification examination, and that he gained virtually no practical experience in the technical aspects of the field.

**109** Another student had a similar experience. He had worked in the gas-fitting industry for over 20 years. After his license lapsed, he inquired about retraining. He approached Mohawk College, but was told that the course was full and staff there suggested he consider Bestech Academy. He later enrolled at Bestech in May 2008. However, he told us that he received no formal instruction and very little practical experience at Bestech. Instead, he and another student simply sat in a lunchroom and reviewed photocopied lessons on their own. This student blamed his inability to pass the TSSA certification examination on the inadequate training he received.

**110** Twenty-seven-year-old Greg Griffiths was also frustrated by the lack of practical training provided at Bestech. He enrolled in an oil burner course on June 19, 2008 – the same day the restraining order was issued against Bestech. He was assured by Ms. Ballegeer that Bestech Academy was registered with the Ministry, and that she had TSSA approval to condense the hours of the course from the usual 180 to 60. There were only two other students in the course, who spent their time studying theory, since they could not fire up the furnaces as Bestech's suppliers had stopped delivering oil to the school. The students finished the course, but Ms. Ballegeer kept notifying them that the TSSA certification examination was repeatedly postponed. In the end, Mr. Griffiths was unable to write the examination. He is waiting to hear whether the TSSA will be able to assist him.

**111** Derek Beattie, 19, learned about Bestech when he received a marketing call, while he was working in a high school co-op program for an air conditioning and furnace company. Derek had no reason to doubt that Bestech Academy was a legitimate private career college. He enlisted his parents help to pay his tuition, and took

advantage of a discount offered by the school, signing up for the Gas Technician 3 and 2 programs at the same time. He paid \$4,700 in total for the two courses. Mr. Beattie finished the Gas Technician 3 course and started the Gas Technician 2 program in August 2008. At the time, he had no idea that Bestech was operating illegally and that a restraining order had been issued against it two months earlier. However, just as he was looking forward to completing his last unit of the course, Bestech Academy suddenly closed its doors for good. Mr. Beattie and his mother tried repeatedly to contact the owner, finally tracking her down at a restaurant where she was waitressing. Ms. Ballegeer assured him that his tuition would be returned, but as usual, her promises proved to be vacant ones. He has been in contact with the TSSA in the hope that he might be able to finish his last unit at another institution. He is not presently working in the fuels industry.

**112** Kristopher Neiser, a 28-year-old student, learned about Bestech through word of mouth. After checking out Bestech Academy's website, he decided to enrol in the Gas Technician 2 course on September 29, 2008. Like Mr. Beattie, Mr. Neiser had no idea that Bestech was operating illegally and that a restraining order had been issued against it. He paid over \$3,000 in tuition by credit card, which he is still paying off. At the time he enrolled, the course had already begun and was to continue until November 12, 2008. The program was cut short when Bestech closed its doors. Mr. Neiser and another student were successful in obtaining a judgment in small claims court for their outstanding tuition. However, they now face an uphill battle attempting to actually collect from the insolvent school and the bankrupt Ms. Ballegeer.

**113** Mike Heywood, 31, wanted to pursue a vocation after working for years at various odd jobs. He first approached a college of applied arts and technology, but was told it was booked up. He went online and found Bestech's website. He gave up one of his part-time jobs, and paid \$2,578 in tuition, to attend a night course for Gas Technician 3 running from October 14, 2008 to April 30, 2009. Only one other student was enrolled with him. His first surprise was that he was provided with photocopied pages of Canadian Standards Association course material, instead of the books that he had paid for. Then things began to unravel. His instructor started to cancel classes, at first without explanation, and later because the school was "awaiting accreditation." In mid-November the instructor told Mr. Heywood the bad news: the school was closed for good. He tried unsuccessfully to reach Ms. Ballegeer. Eventually, he approached the *Hamilton Spectator* with his story.

**114** Bestech Academy appeared to its students to be a credible, legitimately operating private career college, accredited by the TSSA as a training provider. Many have

since questioned how the Ministry, knowing what it knew about Bestech, could have allowed the school to operate for so long and without issuing any warning.

## Buyer Beware

115 It is true that the students could have conducted more research before enrolling at Bestech. The Ministry's website contains information about private career colleges, including reference to the fact that these institutions must be registered. Students can also search a database of registered institutions maintained by Service Ontario. While the registration database is difficult to navigate at times, the school name must be exact, and programs are often listed under the wrong category, it provides some guidance to prospective trainees. However, not everyone is familiar with the Internet. And even a web search would not have revealed the full extent of Bestech's calamity.

116 While the Consumer Protection Branch of the Ministry of Small Business and Consumer Services posts a "consumer beware" list on its website, the Ministry of Training, Colleges and Universities does not post specific warnings about schools it knows to be operating illegally, citing concern about damaging colleges unfairly. While the Ministry now does include orders issued against private career colleges on its site, these are not posted expeditiously, and to add to the confusion, some of the restraining and compliance orders referenced are old, and cover institutions that have since come into compliance. In the case of Bestech Academy, the October 31, 2008 restraining order against it wasn't posted on the Ministry's site until December 2008, just as media attention began to focus on the school, and well after it had finally closed its doors.<sup>34</sup> Bestech was also still listed on the TSSA's website as a training provider up until the Ministry wrote to it on November 27, 2008 requesting that Bestech's name be removed.

117 It is obvious that there is much more that the Ministry can do to publicize its knowledge of illegal operators, who are placing the public at risk. The Ministry should be taking all steps within its power to get the word out to students. While

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<sup>34</sup> See *Private Career Colleges Act*, *supra* note 1 at s. 49: The Superintendent must publish particulars in the case of refusals to renew or suspension or revocation of a registration, after the period for requiring a hearing has expired, or after the Licence Appeal Tribunal has made its order. Similarly, notices of contravention are to be posted after the review period has expired or the Minister has made his or her decision. Ministers' decisions regarding administrative penalties must also be posted. The Superintendent has the discretion to publish particulars of a Superintendent's order or court restraining order at any time after issuance.

there are some restrictions in the Act concerning publishing information about colleges in certain circumstances, nothing would appear to prevent the Ministry from identifying illegal operators, who have made no effort to comply with registration and approval requirements. The Ministry should be less worried about the reputation of unregistered private career colleges, and more concerned with protecting innocent consumers.

**118** None of the students we interviewed had visited the Ministry's website prior to enrolling with Bestech. Under the circumstances, it would have been much more effective had the Ministry posted notices at the physical locations where Bestech was doing business. While the Ministry has followed this practice in the past with some registered private career colleges, it does not appear to have given consideration to doing so in the case of an unregistered institution such as Bestech. By posting notices at an illegal school, the Ministry might be able to reach those students who are most at risk.

**119** At least as far back as Spring 2007, the Ministry knew enough about Bestech's illegal operation that it could have taken some steps to try to stop it. While on occasion the Ministry talked tough, it never followed through with any effective enforcement action. During our investigation, it became apparent that the Ministry's inaction is systemic and could be explained, in part, by the submissive culture in which the Private Career Colleges Compliance Unit operates.

## **Always the Carrot, Never the Stick**

**120** Historically, the Ministry has never actively pursued unregistered operators of private career colleges. Officials claim that under the old legislative scheme, even when illegal colleges were brought directly to their attention, they had no effective method of control. The offence provisions under the old Act had never been used, and the Ministry had instead directed its efforts at "moral suasion," leading in some cases to sending out "strongly worded" letters. We were told that the Ministry's focus has always been on educating transgressors rather than on penalizing them. According to a former Superintendent, the emphasis has been on "bringing schools into compliance" and not on "the gotcha game." To that end, compliance staff were even symbolically reclassified at one point from "inspectors" to "program consultants."

**121** Even with the more extensive powers granted to the Superintendent under the *Private Career Colleges Act, 2005*, particularly in regard to unregistered operators,

the Private Career Colleges Compliance Unit's philosophy appears to still be one of persuasion versus penalty. We were repeatedly told by officials that the Unit operates on the principle of "voluntary compliance." The Ministry encourages colleges to conform through fostering "relationships with unregistered institutions to get them... under the cradle of registration." When the Ministry takes the more serious step of issuing a restraining order, it is not uncommon for it to issue not just one, but two or three, rather than to escalate enforcement to a court injunction or prosecution. Unfortunately, this passive method of enforcement is not particularly effective when dealing with unscrupulous operators, who can manipulate the system to their own advantage. In light of the Ministry's approach to enforcement, there continues to be potential for illegal vocational college operators to slip through the compliance net.

**122** If it is to be effective at enforcement, the Ministry will have to reorient itself, place greater emphasis on consumer protection and adopt an investigatory mentality. However, it is not clear that the Ministry's current organizational structure and administrative practices support a system of effective oversight.

## A New Take on Enforcement

**123** While the new Act created more extensive powers, including clear authority to take enforcement action against unregistered schools, the Ministry is still reluctant to exercise the full range of its authority. The Ministry is dogged in its belief that its goal is ultimately to register illegal operators, not to stop them. As one senior Ministry official noted, "The best way I can protect the students is to get them [colleges] registered. And in managing that relationship, if I take that small business and 'cease and desist' them into oblivion, well, that doesn't achieve the goal either."

**124** The Ministry has only obtained one court injunction and has never laid provincial offence charges against a private career college. The Ministry has not adopted an investigative model, but maintains a relentless focus on providing positive incentives for registration as opposed to negative sanctions. This a very different approach to the methods employed by the Consumer Protection Branch of the Ministry of Small Business and Consumer Services, which has provincial offence officers on staff, and actually prosecutes unfair business practices.

**125** The Ministry does not engage in systematic monitoring of unregistered career colleges, and the private career colleges are largely left to “self-police.” Ministry staff do not regularly monitor the internet, or trade papers looking for offenders. Even information from pre-screening, which is carried out by a separate unit, is not routinely flagged for further follow up. It is quite conceivable that there may be other sectors that are unknown to the Ministry, where vocational colleges are operating illegally, and taking money from unprotected students. While the Ministry has indicated that it now considers problematic unregistered colleges as a key area for inspection, it is not uncommon for inspections to take a back seat to the other work of the unit. For instance, after the new registration process came online in August 2008, “risk” inspections were placed on hold for about eight months so that staff could address registration backlogs.

**126** The Ministry also has no guidelines for escalating enforcement, timelines or standards. As demonstrated in Bestech’s case, months can pass with no activity, and deadlines are allowed to slip by with no action being taken. In order to fulfill its enforcement mandate, the Ministry needs to apply greater operational rigour. To do so, it must abandon its overreliance on building relationships with illegal operators as well as the self-defeating perception, voiced by some officials, that its power is limited and that there is not much it can do to bring unrepentant operators in line. The Ministry has a wide array of enforcement tools at its disposal. It should not be hesitant to use them.

**127** In Bestech’s case, while the Ministry was busy giving Ms. Ballegeer second, third and fourth chances, innocent students were being misled and losing their money. In its concern to preserve its tenuous relationship with Bestech, the Ministry ultimately failed consumers.

**128** There is certainly a duality to the Ministry’s current role, but enforcement against problematic operators, who are clearly non-compliant, should not be pre-empted by a belief in education and persuasion. There should be a clear enforcement path, with flexibility to address severe situations quickly and decisively. Once the Ministry issues a formal warning, failure to comply should trigger increased enforcement, not more empty threats. If a restraining order is issued, and deadlines set, unless there are extenuating circumstances, enforcement should be taken up a notch if non-compliance continues. The Ministry should forget about enticing operators to register when they persistently and unabashedly demonstrate contempt for the registration process, and be prepared to use the full force of the sanctions at its disposal. The Ministry should actively seek out information on illegally

operating colleges, and use its inquiry and inspection powers. It should make orders and even take steps to prosecute, when appropriate.

- 129** Unfortunately, one of the most useful enforcement tools is not yet at the Ministry's disposal. The administrative penalty provision in the Act promises a relatively streamlined and effective way to encourage compliance, however, the regulations necessary to bring this mechanism to life are still in the embryonic stage. When the Ministry was asked about the delay, we were told that it was a matter of other priorities taking precedence. At present, the Ministry is expecting this remedy to come into play in Fall 2009. In the interim, enforcement momentum is stalled, and Ontario's consumers of vocational training continue to suffer. The Ministry should step up its efforts to ensure this remedy is available as soon as possible.
- 130** The Ministry should also not lose sight of the fact that in the case of some technical vocational training providers, its failure to take quick action against an unregistered college, may place public health and safety in jeopardy.
- 131** The health and safety implications of illegal technical training should be an important factor in the Ministry's enforcement strategy. Yet in the case of Bestech, some Ministry officials justified their enforcement inertia by suggesting that at least there were no safety concerns, since Bestech's programs were TSSA-accredited. The TSSA is responsible for ensuring safe transportation, storage, handling and usage of fuels, and in this role requires that individuals working in the fuels industry receive training from approved instructors. But the Ministry never actually consulted with the TSSA about Bestech's credentials. If it had, it would have realized that some of the programs Bestech offered were not accredited by the TSSA. Even some students sponsored through the Ontario Skills Development Program attended the Gas Technician 2 and 3 programs before TSSA accreditation had been obtained. If the Ministry had conducted further inquiries into Bestech's operations, as it has the power to do under the Act, it would have learned that in addition to risking money in an insolvent institution, students were obtaining a sub-par education that did not comply with TSSA standards.
- 132** If one good thing has come about as a result of the Ministry's discovering the field of gas technician training, it is that both the TSSA and the Ministry have now gained a new understanding of their respective roles and how they interconnect.

## Making Connections

**133** Prior to April 2008, the TSSA was essentially unaware that accredited training providers also required registration with the Ministry, and the Ministry was largely ignorant of the role the TSSA played in accrediting training providers in the fuel industry. In the words of one former superintendent: “TSSA, I thought they did elevators.” On January 23, 2009, the two parties entered into a Memorandum of Understanding, which encourages them to work together in administering their respective oversight roles, and to ensure that proper authorization is obtained from both bodies for fuel related training. However, there are still kinks in the process. For instance, there is still no protocol for ensuring that unregistered training providers are removed expeditiously from the TSSA website to avoid misleading the public regarding their credentials.

**134** The Ministry should not be working in a compliance vacuum. It should be actively seeking out professional and regulatory bodies that accredit or otherwise work with vocational training providers to obtain information about their fields of expertise with a view to controlling illegal operators. It should continue to work with the TSSA and begin working with other organizations, to ensure that they do not inadvertently promote the qualifications of training providers operating in contravention of the *Private Career Colleges Act, 2005*.

**135** Regrettably, even with hindsight, many Ministry officials we interviewed did not accept any particular responsibility for what had occurred with Bestech or suggest that a more rapid response on their part would have led to a different result. One program consultant suggested that the Ministry actually acted quite expeditiously, observing, “once we became involved in March – the timeline was relatively good.” Delay is anathema to successful enforcement. However, Compliance Unit staff appear resigned to it as a fact of life in private career college oversight.

## Thinking Beyond the Backlog

**136** The attitude of complacency we encountered in the Private Career Colleges Compliance Unit is likely reflective of the fact that staff have become overwhelmed by a large body of work, and competing demands. There were indications during our investigation that the Ministry is trying to balance a number of diverse responsibilities and not succeeding that well. At times, the Ministry has had to place moratoriums on registrations; at others it has put its inspection activities on hold.

**137** Stakeholders we interviewed were consistent in their criticism of the complicated on-line registration and program approval process, which is plagued by backlogs. For businesses wishing to start up a private career college, time is often of the essence, and opportunities can be lost through delay. Currently, according to the Ministry's website, it takes six to eight months for a private career college to be registered or have a program approved. We were told in some cases it can take up to a year. While some college registrations and approvals can take a matter of weeks, others must wait in a queue for long periods, before they are actively reviewed.

**138** Compliance Unit staff are generalists who must juggle caseloads that include hundreds of registration and compliance matters. While the number of program consultants was increased from five to eight after the new legislation came into force, delay appears to be an inevitable part of the Compliance Unit culture and a contributor to the laxity in its enforcement.

**139** It is clear that the Ministry must strike a better balance. It needs to review how the functions associated with private career colleges are carried out and discover more efficient ways of managing its diverse responsibilities. Consideration should be given to rationalizing staff roles, so that tasks requiring relationship building with applicants and registered training providers are adequately divorced from the more proactive and assertive enforcement responsibilities. There is a place for education and consultation in the regulation of private career colleges, but there is also a need for firm enforcement. It is unlikely that the Ministry will be successful unless the divergent facets of its responsibilities are reconciled through a more intuitive division of tasks. The Ministry should also consider having provincial offence officers on staff with the authority to pursue prosecution of offenders in egregious cases.

## Seeking an Interim Solution

**140** Part of the Ministry's hesitancy to take an aggressive enforcement stance in the area of private career colleges lies in its concern not to drive honest, although unregistered, operators out of business and deprive students of educational options that might not otherwise be available.

**141** Colleges have a responsibility to learn and play by the rules and students are entitled to the protections that only come with registration and program approval. Colleges that take the chance and begin operating illegally pending Ministry approval put

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students at risk. However, the Ministry's overburdened registration and approval process means businesses may go under while waiting for registration or program approval to come through. There is no compromise available at present that would allow operators the ability to provide their services pending registration or program approval, while at the same time offering students some measure of protection for their investment of time and money. While it is tempting to suggest that the government should simply provide the Ministry with more resources to eliminate backlogs, this is not necessarily the only solution. The Ministry should consider whether there are any interim measures, for instance involving an initial risk assessment and posting of security, that could be employed to ensure that businesses and students don't lose out because the Ministry is unable to process its workload efficiently. As it stands now, because of the Ministry's reluctant approach to aggressive enforcement, illegal operators are by default allowed to operate for long periods of time without any safeguards for students. This is not in the public interest from any vantage point, and is diametrically opposed to the consumer protection purposes of the Act.

## If You Can't Beat 'em, Join 'em

- 142 In a bizarre postscript to the Ministry's abjectly inept oversight of Bestech Academy, as one department of the Ministry was finally gearing up to shut it down, another was extending its hand in welcome to its president.
- 143 On September 12, 2008, the Ministry advertised a vacancy for a program coordinator with the Service Delivery Branch, Delivery Support Unit, Community and Industry Relations. The responsibilities of this position included representing the Director of Apprenticeship on the Ministry's Provincial Advisory and Industry Committees.
- 144 In a remarkable display of *chutzpa*, on September 15, 2008, June Ballegeer applied for the position of program co-ordinator with the very Ministry she had been attempting to thwart for years in her role as president of Bestech Academy. In the resumé she sent with her application, Ms. Ballegeer listed an impressive array of experience in support of her claim that she was well suited for the role. Paradoxically, at the top of her list of accomplishments was her recent experience as "Director of Operations Program Co-ordinator and Instructor" with Bestech Academy Inc. She left out the fact that she was president of the company, allegedly to avoid appearing too overqualified.

**145** While unsuspecting students of Bestech Academy were finishing their courses, new students were being enrolled for future programs that would never materialize, and angry creditors lined up at Bestech's door demanding payment. Ms. Ballegeer was preparing her escape. As fate would have it, Ms. Ballegeer was once more successful at pulling the wool over the Ministry's eyes. On November 7, 2008, just days after the Superintendent of the Private Career Colleges Compliance Unit issued a restraining order against Ms. Ballegeer, and as Bestech Academy finally collapsed, the Ministry offered Ms. Ballegeer employment. June Ballegeer beat out 13 other candidates selected for interviews, and 342 other applicants for the position. Ms. Ballegeer gladly accepted the Ministry's offer and began her employment on November 10, 2008.

**146** The Ministry's decision to hire Ms. Ballegeer was not made arbitrarily. In accordance with standard practice, the hiring manager had contacted two of the five references Ms. Ballegeer provided, and both had been favourable. However, Ms. Ballegeer had not provided a reference from her most recent "employer," Bestech Academy, and no explanation for this was sought. If the Ministry had probed a little further and taken the additional step of canvassing management in the Private Career Colleges Compliance Unit about what they knew of Bestech Academy, the result would likely have been quite different.

**147** On her first day with the Ministry, Ms. Ballegeer signed a document acknowledging that she understood various terms and conditions relating to her employment, including her responsibility to identify to her manager any possible conflicts of interest. She was also referred to the Corporate Policy Conflict of Interest and Post-Service Directive. At the outset, the directive refers to principles that public servants are required to follow in their work including, maintaining and enhancing public confidence and trust in the integrity, objectivity and impartiality of government and conducting themselves in a manner that will bear the closest public scrutiny.

**148** In her role as program co-ordinator, Ms. Ballegeer was responsible for acting as the delegate of the Director of Apprenticeship on Ministry-appointed advisory and industry committees, composed of representatives from both private and public educational institutions. These committees advise the Minister on training issues, industry trends, standards, certification, examination, curriculum and policy. Ms. Ballegeer was to act as a secretary on committees, consult with and identify subject matter experts in various trade areas, and ensure that individuals selected for committees had no conflicts of interest. Despite the fact that Ms. Ballegeer had been involved in a drawn-out and escalated dispute with the Ministry concerning

illegal fuel industry training, which would certainly bring into question the propriety of her acting in the capacity of program co-ordinator, she stayed mum. But soon enough her true colours emerged.

**149** As Ms. Ballegeer went about her daily duties, applying for a corporate credit card along the way, her presence at the Ministry came to the attention of external stakeholders familiar with her from their past dealings. For instance, we know of at least one meeting held to discuss whether an industry committee would be established for a particular trade, which she attended in her new capacity with the Ministry. Industry representatives familiar with Ms. Ballegeer were also present at the meeting, leading to speculation about her status and relationship with the Ministry. I suspect rumours concerning Ms. Ballegeer's new position also began to circulate as she came into contact with members of the private career college community. But it was not until December 14, 2008, that the Compliance Unit of the Ministry received a tip from a disgruntled unregistered private career college alerting it to the fact that Ms. Ballegeer was a Ministry employee. The program consultant who received this information quickly notified her managers, suggesting that they better check this out since "it would be embarrassing for the Ministry if we had just issued an order against her and she was working for or with Apprenticeship." Unfortunately, the unit's worst suspicions were confirmed the next day, when the manager met with officials from the Service Delivery Branch.

**150** To its credit, once the Ministry was fully informed of the implications of its having hired Ms. Ballegeer, it acted swiftly. On December 16, 2008, June Ballegeer was suspended with pay for 20 days "pending an investigation into allegations of inappropriate conduct" regarding her role within the Ministry and her involvement in Bestech Academy. Her work product and emails were secured and her voice messages were redirected to her manager.

**151** On January 12, 2009, after conducting an investigation, the Ministry wrote to Ms. Ballegeer advising her that she was being released from her position. The Ministry referred to the fact that the position she had held was "one of responsibility, trust and influence" and where "reputation and credibility are vital to working effectively with clients while supporting the Ministry in its mandate." The Ministry concluded that:

As a result of the circumstances of your former position as president of an unregistered vocational college and the current outstanding issues pertaining to your association and role in the dealings of that company,

you are unable and will remain unable to meet the requirements of your current position as Program Co-ordinator.

**152** Senior management in the Service Delivery Branch could not understand why an individual who had been subject to enforcement action by the Ministry would turn around and apply for a position within that same Ministry, albeit in a different branch. However, they had never before come up against the audacious Ms. Ballegeer. According to Ms. Ballegeer, the position at the Ministry was just one of several she had applied to when it had become clear that Bestech was no longer viable, and she needed to seek alternative employment. After all, she had to earn something to repay all the students and investors who had misguidedly placed their faith in her. From the perspective of those students and investors, they were mystified and incensed that the Ministry, after failing to protect consumers from Ms. Ballegeer, had actually hired her. Not only did she profit from her unlawful acts, but she ended up earning a salary from the very Ministry that had ineptly pursued her. While Bestech Academy had already floundered by the time the Ministry unwittingly retained Ms. Ballegeer, undoubtedly, her employment served to further undermine public confidence in its capacity to effectively oversee unregistered private training providers.

## Reference Check Reality Check

**153** While it may be unlikely that another June Ballegeer will ever darken the Ministry's door as a job applicant, the Ministry can still learn from its experience with her and improve its human resources practices as a result. While candidates are often understandably reluctant to provide a reference from their current employer for fear of letting them know too soon that they are seeking work elsewhere, the Ministry should at least try to obtain a reference from the most recent employer, and inquire into why such a reference is not provided. In addition, when an applicant has experience in a field that is regulated by the Ministry, it makes eminent sense for those responsible for this area to be consulted. With appropriate consent, the Ministry can conduct broader inquiries of professional bodies, educational institutions and others to confirm the information relayed by a job applicant. As Ms. Ballegeer's case illustrates, it would also have been wise to conduct a standard credit check before hiring her for a position in which she would have had access to a corporate credit card.

**154** Ms. Ballegeer obviously considered herself above the law – "too cool for school" – as she doggedly pursued her own self-interest to the detriment of student consumers

and investors alike. Given its “voluntary compliance” culture and lax enforcement practices, the Ministry was not only unprepared and unfit to contend with the likes of Ms. Ballegeer, but it essentially enabled her to prosper from her practiced deceit.

## Tangled Web

155 It is not known how many former Bestech Academy students have suffered financial loss at Ms. Ballegeer’s hands. During our investigation, we learned of at least nine former Bestech Academy trainees who were unable to complete their programs as a result of the school’s precipitate closure. While these individuals and others fell prey to the calculated dishonesty of Ms. Ballegeer, it was the Ministry’s inattention, indifference and dereliction of duty, which ultimately spawned the environment in which Ms. Ballegeer prospered at the expense of innocent students.

156 The *Private Career Colleges Act, 2005* fostered the expectation that students would receive the education that they were promised. However, throughout its dealings with Bestech Academy, the Ministry repeatedly failed to protect student interests. Instead of acting swiftly at the outset to try to stop Ms. Ballegeer’s illegal operation, the Ministry knowingly supported Bestech Academy through referrals under the Ontario Skills Development Program. Months of inaction on the part of the Ministry were followed by intermittent attempts to bring Ms. Ballegeer into compliance through issuing toothless threats, which were never effectively escalated. The Ministry’s principal and misguided strategy was to try to persuade Ms. Ballegeer into compliance. This approach was an abysmal failure. Despite Ms. Ballegeer’s defiance of the law, her broken commitments, and history of misinformation, the Ministry did not take any steps to warn prospective students. Instead, it held its passive course, extending second chances and turning a blind eye.

157 As a result of my investigation into the specific circumstances surrounding the Ministry’s oversight of Bestech Academy Inc. and its enforcement of the *Private Career Colleges Act, 2005*, I am concerned that unless there are some fundamental changes in how the Ministry does its business, individuals seeking to better their lives through vocational training will still be at the mercy of ruthless and incompetent illegal operators. I also believe that those who suffered losses as a result of the illegal operation of Bestech Academy are entitled to some redress. At this point, Bestech Academy is insolvent and effectively defunct, and Ms. Ballegeer is personally bankrupt. Under the circumstances, there is no practical recourse in sight. Given the unique and exceptional nature of this case, I believe it is incumbent

on the Ministry to accept some responsibility for fashioning a remedy for those who, through the Ministry's lack of due diligence, fell victim to Ms. Ballegeer.

## Opinion

**158** It is my opinion that the Ministry's failure to effectively oversee Bestech Academy Inc. and to conduct further inquiries before hiring June Ballegeer, Bestech's President, was unreasonable and wrong in accordance with s. 21(1)(b) and (d) of the *Ombudsman Act*.

## Recommendations

To address the concerns that I have identified in my investigation, I am making the following recommendations:

### **Recommendation 1**

The Ministry of Training, Colleges and Universities should issue public warnings through a website "buyer beware" list and posting of notices at the physical locations of illegal private career colleges and other means, when it is aware that such colleges present a risk to student consumers.

Subsection 21(3)(g) *Ombudsman Act*

### **Recommendation 2**

The Ministry of Training, Colleges and Universities should ensure that the information posted to its website about decisions and orders affecting private career colleges is current, and posted expeditiously.

Subsection 21(3)(g) *Ombudsman Act*

### **Recommendation 3**

The Ministry of Training, Colleges and Universities should rigorously enforce the *Private Career Colleges Act, 2005*, to the full extent of its powers, including actively seeking out and tracking information about illegal operators, regularly using its inquiry, inspection and order making authority, establishing timelines and standards for escalating enforcement and penalties, and seeking prosecution of offenders, when appropriate.

Subsection 21(3)(g) *Ombudsman Act*

**Recommendation 4**

The Ministry of Training, Colleges and Universities should take all steps necessary to ensure that the regulations required to enable it to enforce administrative penalties against private career college operators are developed on an urgent basis.

Subsection 21(3)(g) *Ombudsman Act*

**Recommendation 5**

The Ministry of Training, Colleges and Universities should consider employing provincial offences officers in its Private Career Colleges Compliance Unit to ensure timely prosecution of offenders.

Subsection 21(3)(g) *Ombudsman Act*

**Recommendation 6**

The Ministry of Training, Colleges and Universities should continue to work with the Technical Standards and Safety Authority and seek out and work with other professional and regulatory bodies to ensure that illegally operating private career colleges are not promoted as vocational trainers.

Subsection 21(3)(g) *Ombudsman Act*

**Recommendation 7**

The Ministry of Training, Colleges and Universities should conduct an organizational review of its private career college operations with a view to ensuring that its various functions are carried out in the most effective and efficient manner possible.

Subsection 21(3)(g) *Ombudsman Act*

**Recommendation 8**

The Ministry of Training, Colleges and Universities should consider options and implement new practices to address delays in processing of registrations and approvals for private career colleges, which take into consideration the prejudice to training providers of institutional delay, while at the same time ensuring protection of student consumers.

Subsection 21(3)(g) *Ombudsman Act*

### **Recommendation 9**

The Ministry of Training, Colleges and Universities should attempt to obtain references from the most recent employers of individuals applying for positions, and make appropriate inquiries if such references are not available. The Ministry should also conduct broader inquiries concerning candidates' suitability for positions, including, if they have experience in a field regulated by the Ministry, consulting with officials from the area responsible for regulation.

Subsection 21(3)(g) *Ombudsman Act*

### **Recommendation 10**

The Ministry of Training, Colleges and Universities should establish a program with the objectives of identifying former students of Bestech Academy Inc., who have suffered financial loss as a result of the operation of Bestech Academy Inc., through advertising and other outreach methods, quantifying the amounts owed, and where appropriate offering reasonable compensation.

Subsection 21(3)(g) *Ombudsman Act*

### **Recommendation 11**

The Ministry of Training, Colleges and Universities should report back to my Office at quarterly intervals on its progress towards implementing my recommendations until such time as I am satisfied that adequate steps have been taken to address them.

Subsection 21(3)(g) *Ombudsman Act*

## **Response**

**159** At the conclusion of my investigation, a preliminary report and recommendations were provided to the Ministry. The Ministry responded in a letter dated May 29, 2009, indicating that in order to address the issues raised in my report, it plans to focus on enhanced student education about the sector, prompt posting of orders, appropriate enforcement of policies and reinforcement of Human Resources best practices in hiring to fill Ministry staff positions.

**160** In response to my recommendation that the Ministry issue public warnings through various means including a website "buyer beware" list and posting of notices at physical locations of illegal private career colleges, the Ministry said that it would

look to expand the scope of information available to students. It noted that the Ministry of Small Business and Consumer Services' "buyer beware" website is specifically authorized by legislation and regulation. The Ministry undertook to continue to look into its ability to publish a list, and any potential liabilities through further consultation with the Ministry of Small Business and Consumer Services and other research. The Ministry explained that it already publishes information on its public website concerning the Superintendent's compliance and enforcement orders, a checklist for students who are looking to attend a private career college and a search engine for all registered private career colleges and programs that they are approved to offer. The Ministry also indicated that it would work with Service Ontario to make its Registration Information for Career Colleges system more consumer friendly and easier to read. It explained that the program category data has been reviewed and changed to increase the accuracy of searches, as private career colleges sometimes choose an inappropriate category when entering the information on the system. (**Recommendation 1**)

- 161 The Ministry advised that it now has a process where, if an individual does not comply with the requirements of an order by the deadline given, the order is posted to the website within one business day. It committed to continue to post orders as soon as possible if non-compliance continues after any deadline set for compliance has expired. (**Recommendation 2**)
- 162 The Ministry committed to work with the Ministry of the Attorney General to develop protocols regarding prosecution and injunction opportunities. It also undertook to review its current compliance and enforcement role and the way that it addresses compliance with illegal operators (primarily a complaint-driven process) in an effort to address my recommendation that it rigorously enforce the *Private Career Colleges Act, 2005* to the full extent of its powers, specifically with regard to issues of timelines and standards. In addition, it explained that it would explore ways to use offences as it moves forward developing processes. (**Recommendations 3 and 5**)
- 163 The Ministry reiterated that it had already begun the process of preparing a regulation around administrative penalties. (**Recommendation 4**)
- 164 It also advised that it would continue to work with the TSSA to ensure both parties live up to their obligations under the Memorandum of Understanding entered into between the Ministry and the TSSA, and explained that where there is or will be a regulatory body, the Ministry seeks to work closely with them in order to ensure that students graduate with the skills and knowledge they need to succeed.

**(Recommendation 6)** Ministry officials explained that it currently has relationships with 21 regulatory bodies, including a number in the healthcare field.

**165** In response to my recommendation that the Ministry conduct an organizational review of its private career college operations with a view to ensuring that its various functions are carried out in the most effective and efficient manner possible, the Ministry referred to a Postsecondary Education Division review it initiated in November 2008. It noted that the review recommended that all functions relating to the Ministry's administration of the Act be brought together in a single structure under the Superintendent of Private Career Colleges in order to streamline operations and strengthen accountability. The Ministry explained that it would continue to look at ways to improve its business operations over the next 12 months. **(Recommendation 7)**

**166** The Ministry indicated that it would use the opportunity of the Postsecondary Education Division review to create an organization which would be as effective as possible in delivering improved service. It also undertook to look at current practices and tools used to address delays in processing registrations and approvals. **(Recommendation 8)**

**167** With respect to the concerns I had identified about the Ministry's hiring practices, the Ministry explained that it is a best practice for managers to check on an employee's most recent employer, and that its reference consent form states that, "One of the references should be your current or most recent manager." The Ministry acknowledged that a reference from the current or recent manager was not obtained in this instance. The Ministry undertook to ensure its hiring managers are directed to check the references of the current or most recent manager as part of the recruitment and selection process and to work on a process for hiring managers to use to access information about the top candidate's affiliation with the Ministry-regulated organizations, where information is publicly available. The Ministry also explained that it was committed to further exploration of ways of implementing my recommendation that it conduct broader inquiries concerning candidates' suitability for positions. **(Recommendation 9)**

**168** In its initial letter in response to my recommendation concerning establishing a program for former Bestech students, who suffered financial loss as a result of the operation of the school, including where appropriate offering reasonable compensation, the Ministry suggested that although it was regrettable that Bestech students had attended an unregistered school, students that enrol in an unregistered course do so at their own risk. It suggested that they were "of course, at liberty to

pursue legal action against Bestech in Small Claims Court.” (**Recommendation 10**) I suggested that the Ministry reconsider its position with respect to this recommendation, and on June 19, 2009, the Ministry provided further submissions. The Ministry explained that the *Private Career Colleges Act, 2005* was passed after comprehensive review, which included consultation with a variety of stakeholders including the Ontario Association of Career Colleges, owners/operators of all registered private career colleges and previously exempt organizations. It noted that the Training Completion Assurance Fund, which was established under the *Private Career Colleges Act, 2005* is entirely financed by premiums paid by registered career colleges, and went on to comment that:

These provisions of the PCCA, 2005 were part of the government’s policy decisions regarding appropriate measures for compensating students of private career colleges in specified circumstances such as a school closure. TCAF is designed to provide compensation to students of approved programs at registered private career colleges, all of whom are listed in a searchable format on Service Ontario’s publicly available website. At the time of designing TCAF, the government made a policy choice that the fund would be the source of compensation for students. The policy choice was to create an insurance fund entirely funded by the schools themselves, rather than having government underwrite the risk with taxpayers dollars. TCAF does not extend to students of unregistered private career colleges, and the premiums paid into that fund by registered private career colleges are not meant to subsidize the debts owed to students by unregistered schools.

The government believes that this framework appropriately balances the rights and obligations of students and registered private career colleges with the public interest. We believe that this considered policy choice is still the best compensation scheme that the government can offer to students in this sector given scarce government resources. We are not unsympathetic to the former students of Bestech Academy, but we have an obligation to balance the interests of many stakeholders, including the taxpayers, in considering the most appropriate and proportional role for the government in resolving these complaints.

**169** I am very disappointed, but not altogether surprised, that the Ministry has adopted this stance concerning this recommendation. I understand the policy reasoning behind the establishment of the Training Completion Assurance Fund and readily acknowledge that former Bestech students would not qualify for relief under the

Fund. However, these students were duped by an unscrupulous individual, in circumstances where the Ministry was well aware of her illegal activity. Furthermore, it was as a result of its own misguided and ineffective practices, that the Ministry failed to take quick and decisive action to bring Ms. Ballegeer to heel, thereby allowing her to take advantage of unsuspecting student consumers. It is in this context that I had hoped that the Ministry would employ creative means outside of the Training Completion Assurance Fund to provide some measure of assistance to Bestech's victims. Unfortunately, the Ministry has shown itself a slave to its own system, and unwilling to think and act out of the box in order to do the right thing by these students.

**170** With respect to my final recommendation, the Ministry has agreed to report back on a regular basis to my Office, but it requested that it be permitted to do so every six months, due to the complexity of many of the recommendations. **(Recommendation 11)** Given the Ministry's history of procrastination with respect to its enforcement activities, I am not convinced that it would be prudent to extend the time for reporting back to my Office, as the Ministry has requested. Accordingly, I continue to expect progress reports at quarterly intervals.

**171** The Ministry has continued to express that it is prepared to consider ways to better protect students who choose a private career college, and is committed to review and implement, where possible, 10 of my 11 recommendations, including conducting a review of the units that support the work of enforcing the PCCA, 2005; conducting a review of enforcement practices by the Superintendent; and considering recommendations relating to publication of information about unregistered schools and communicating with potential and current students of private career colleges. The Ministry expressed that it looks forward to doing this work in continuing dialogue with my Office.

172 I am guardedly optimistic about the Ministry's response to my report. While the Ministry has made a number of commitments to implement my recommendations, it has provided little detail. It is apparent that considerable monitoring will be required to ensure that the Ministry takes the significant steps necessary to refocus its organizational approach to oversight of private career colleges.



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